

**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 07/26/05  
AGENDA ITEM 7  
WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council  
**FROM:** City Attorney  
**SUBJECT:** Campaign Contribution Limits

**RECOMMENDATION:**

It is recommended that the City Council introduce the attached ordinance amending Chapter 2, Article 13 of the Hayward Municipal Code relating to campaign contributions.

**BACKGROUND:**

During your July 5<sup>th</sup> Council Meeting, there were discussions about potential modifications to the ordinance presented to the Council. For your reference and convenience, I have drafted language that the Council may insert to address the discussed changes. The changes appear in italics in the attached Ordinance.

Specifically, the following language may be added:

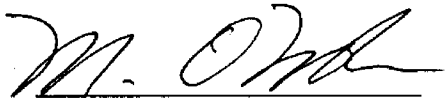
- To clarify how in-kind contributions should be valued the following was added to Section 2-13.02.01:  
  
*"For the purposes of this section, in-kind contributions shall be valued in a manner that is consistent with State law. The after hours use of office space shall not be considered a contribution for the purposes of this Article."*
- To clarify that an "Election Term" is the same as the term to which a member of Council is elected to office, the last sentence of Section 2-13.07( a ) was amended to read:  
  
*"For the purposes of this Article, an election contest shall commence the day following a municipal election for City Elective Office and terminate on the day of the next election for the same City Elective Office."*
- To assure that a candidate is provided with notice of an alleged violation and an opportunity to cure such violation, sub-paragraph ( a ) of Section 2-13.06 was amended to read:

*“( a ) If evidence of a violation of this Article is presented to the City Clerk, she/he shall send written notice to the candidate who is the subject of the complaint and notify such candidate that the alleged violation must be corrected within ten ( 10 ) calendar days of the date on the written notice. If no correction has been made within the allotted time, the City Clerk shall consult with the City Attorney to determine if probable cause exists to either refer the matter to the District Attorney or appoint an independent counsel to serve as a hearing officer. Such hearing officer shall not be an employee of the City.”*

**CONCLUSION:**

If the Council determines that the modifications to the City's Campaign Spending and Contribution Ordinance contained in the attached draft are appropriate, the same should be introduced.

Prepared by:



Michael O'Toole, City Attorney

Approved by:



Jesús Armas, City Manager

Attachments: Draft Campaign Spending and Contribution Ordinance

ORDINANCE NO. \_\_\_\_\_

**DRAFT**

ORDINANCE AMENDING CHAPTER 2, ARTICLE 13  
OF THE HAYWARD MUNICIPAL CODE RELATING  
TO CAMPAIGN CONTRIBUTION AND EXPENDITURE  
LIMITS

THE CITY COUNCIL OF THE CITY OF HAYWARD does hereby ordain as follows:

Section 1 Section 2-13.02.01 is hereby added to Article 13, Chapter 2 of the Hayward Municipal Code to read as follows:

“SEC. 2-13.02.01 CONTRIBUTION DEFINED.

“Contribution” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates. The term “contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this Article. The term “contribution” further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term “contribution” shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term “contribution” include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is not more than fifty dollars.

*For the purposes of this section, in-kind contributions shall be valued in a manner that is consistent with State law. The after hours use of office space shall not be considered a contribution for the purposes of this Article.*

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Section 2: Section 2-13.02.02 is hereby added to Article 13, Chapter 2, of the Hayward Municipal Code to read as follows:

“SEC. 2-13.02.02 AGGREGATION OF CONTRIBUTIONS.

Aggregation of Contributions

- (a) For the purposes of the contribution limits of this Article, the following terms shall have the following meanings:
  - (1) “Entity” shall mean any person other than an individual.
  - (2) “Majority owned” shall mean any ownership of more than 50%.
- (b) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.
- (c) Contributions that are made by entities that are majority owned by any individual shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person.
- (d) Contributions made by a husband and wife shall not be aggregated.

Section 3: Section 2-13.03 of Article 13, Chapter 2, of the Hayward Municipal Code is hereby amended to read as follows:

“SEC. 2-13.03 NOTIFICATION TO VOTERS.

The City Clerk shall publish a listing of candidates for office and indicate whether such candidates have agreed to the voluntary spending limit. The list may be published on the City’s web site.”

Section 4: Section 2-13.01 of Article 13, Chapter 2, of the Hayward Municipal Code is hereby added to subdivision (d) to read as follows:

“( d ) Beginning January 1, 2006 the amounts established by this section shall be adjusted annually by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the contribution limit in a visible place in the City Clerk’s Office.”

Section 5: Section 2-13.02 of Article 13, Chapter 2, of the Hayward Municipal Code is hereby amended to add subdivision ( c ) to read as follows:

“( c ) Beginning January 1, 2006 the amounts established by this section shall be adjusted annually by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the contribution limit in a visible place in the City Clerk’s Office.”

Section 6: Section 2-13.07 is hereby added to Article 13, Chapter 2, of the Hayward Municipal Code to read as follows:

“SEC. 2-13.07 ELECTION CONTEST AND ELECTION TERM.

( a ) The provisions of this Article be applicable to each City of Hayward Municipal election contest for City Elective Office as defined in Section 2-13.00. Such limits shall not be applicable to recall elections. For the purposes of this Article an election contest shall commence the day following a municipal election for City Elective Office and terminate on the day of the next election *for the same City Elective Office*.

( b ) Notwithstanding subdivision ( a ) of this section, an election contest term may be extended for a period not to exceed 180 days to allow a candidate to collect funds for the purpose of retiring unpaid debt from the previous election contest. A candidate desiring to extend an election term must file a written notice with the City Clerk within ten days of the election for which the candidate desires to have the term extended. All funds collected to retire the debt referred to in this subdivision shall be subject to the contribution limitations established for the election contest whose term is being extended.

( c ) Surplus funds collected and not expended by a candidate for a City Elective Office may be utilized in any subsequent election for a City Elective Office. Such funds shall not be counted as contributions for the purposes of this Article.”

Section 7: Subsection ( a ) of Section 2-13.06 of the Hayward Municipal Code is hereby amended to read as follows:

*“( a ) If evidence of a violation of this Article is presented to the City Clerk, she/he shall send written notice to the candidate who is the subject of the complaint and notify such candidate that the alleged violation must be corrected within ten ( 10 ) calender days of the date on the written notice. If no correction has been made within the allotted time, the City Clerk shall consult with the City Attorney to determine if probable cause exists to either refer the matter to the District Attorney or appoint an independent counsel to serve as a hearing officer. Such hearing officer shall not be an employee of the City.”*

Section 8. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent

the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 9. In accordance with Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_\_, 2005, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_ day of \_\_\_\_\_, 2005, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward